

Appl. No. : 09/780,248
Filed : February 9, 2001

REMARKS

Reconsideration and allowance of the above referenced application are respectfully requested.

The restriction is noted. Reconsideration of the grouping is requested, since the viewing of the auction item from multiple different perspectives is also defined by elected claim 17, which hence links the two groups.

The indication that the Patent Office has renumbered claims 20-31 is appreciatively noted. The Patent Office is thanked for this action.

Claims 5-8 stands rejected under 35 U.S.C. 112 as allegedly being indefinite. Claim 5 has been amended to recite accepting bids from a plurality of users thereby obviating the point which was urged regarding indefiniteness. Claims 15 and 29 has been amended in a similar way. Claim 31 has been amended to delete the "first" to obviate the objection to the lack of a "second". The term "low" has been changed to "lower" to thereby obviate the rejection thereto.

Claims 5-8, 15-17 and 28-32 stand rejected under 35 U.S.C. 101 as allegedly being directed to non-statutory subject matter. The rejection effectively states that these claims are not statutory because they are not within the "technological art". This contention is respectfully traversed.

Nowhere is there any requirement in any court case that "technological art" requires that a claim be tied to a computer, or to any hardware whatsoever. However, having said that, it will be shown that in any case, these claims would meet that test. Claim 5 requires that the bids are submitted "from any of a number of clients over a network to a server...". This must be done using a network and the server, both of which are machines, and hence both of which would be within the "technological art".

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Similarly, claim 15 requires displaying an item for sale by auction "over a network". A network requires a machine to be present, and hence, for these reasons, this is clearly within the technological arts.

Claim 28 similarly requires conducting an auction "over a network" which again requires a machine to operate the network. While the undersigned does not acquiesce in the "technological arts" rejection in the first place, with all due respect, this is moot with regards to the rejected claims.

Claims 5-7 stand rejected under 35 U.S.C. 102b as allegedly being anticipated by Shoham. The subject matter of claim 8 has been incorporated into claim 5 in order to obviate this rejection.

However, claims 6 and 7 are independently allowable. Regarding claim 6, the rejection states that Shoham column 6 lines 40-51 discloses bids from a number of clients which define actions to take place at a defined times. Column 6 lines 40-51 explains the minimum increment and start time in an English auction, and explains that "the present invention" has the ability to define "novel market protocols". This does not suggest, and in fact nothing in Shoham suggests, bids to take place at a defined times, as claimed. Claim 6 is allowable for these reasons.

With regards to claim 7, the rejection states that Shoham discloses overriding a bid in column 2 lines 29-34. Column 2 lines 29-34 describes the 'activity rule' in which the user must either increase their bid or lose the right to do so. This teaches nothing about the claimed subject matter of timed override of a previous bid. Quite simply, there is nothing in Shoham that teaches or suggests this feature.

Therefore, claims 6 and 7 should be independently allowable for these reasons.

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Claims 15, 16 and 19 stand rejected under 35 U.S.C. 102 as allegedly being anticipated by Barzilai. Claim 15 requires an item for sale over the network, and that the information allows entering either a bid for the item or an amount that automatically wins the auction. The rejection has apparently taken this claim to recite one or the other in the alternative. Claim 15, has been amended to make it clear that the information that is displayed allows entering either the bid or an amount; either one of them. Barzilai does not disclose entering either bid or amount, and therefore should be allowable thereover.

Claim 28 stands rejected as being anticipated by Holden. Claim 28 requires that a bid received towards the end of an auction is treated less favorably than a bid received prior to that predetermined period. This is in no way taught or suggested by Holden. The rejection refers to the auto extend feature in paragraph 83 of Holden. This automatically extends the auction to avoid snipers. However, all auction bids are treated the same way. It does not treat some bids different than others. Therefore, Holden teaches nothing about treating a bid received within that predetermined time being treated "less favorably" than bids received prior to that time. Claim 28 is hence also allowable for these reasons.

Claim 8 stands rejected based on Shoham in view of "formats". The rejection admits that Shoham does not teach keeping the rules secret. Formats, however, simply teaches that a reserve price is kept secret during the auction. This teaches nothing about keeping bidding rules secret. In fact, the reserve price which is mentioned in "formats", is set by the person who makes the auction, and has nothing to do with the bidding rule. Therefore, this secondary reference is entirely inapplicable. Even if

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combined, it would only provide a Shoham type system, with secret reserve prices from "formats".

Claims 9-11 stand rejected over Shoham in view of Noble. Claim 9 requires that a decision to accept or reject the new bid is made at a local computer. In retrospect, it is believed that this language was broader than intended, and therefore claim 10 has been incorporated into claim 9. Specifically, as amended, the information is maintained about a bid amount which will be necessary for the new user to be the highest bidder. The rejection is based on "official notice"; but this official notice is believed inapplicable to the present claim. The official notice is based on what is done by an auctioneer in a live auction. Amended claim 9, on the other hand, is very different than a live auction; in fact, claim 9 describes saving this information at the local computer, and sending the information to the server computer only when the local bid is higher than the highest bid information. This is about accepting bids at the local computer, even when they are hosted at the remote computer. With all due respect, how auctioneer in a live auction is quite unrelated to this specific interaction between local computer and server computer, as claimed.

Claims 12 and 13 have been canceled to obviate the rejection thereto.

Claim 23 stands rejected over Barzilai in view of the "auction this" reference. Claim 23 requires automatically updating a display, which is not taught or suggested by Barzilai. Claim 24 requires that this is done via automatically refreshing a Web browser. The rejection simply notes that Barzilai HAS a Web browser, but teaches nothing and alleges nothing about automatically refreshing it. In fact, this is not taught by Barzilai.

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Claim 25-26 stand rejected over Barzilai in view of "Auction This" and further in view of Dinwoodie. The rejection alleges that Dinwoodie teaches the use of video to form parts of the auction column 6 lines 19-29. However, Barzilai in view of Auction this and in view of Dinwoodie does not teach using streaming video (claim 25) or stop motion video (claim 26) to form parts of the view, as claimed.

Claim 17 stands rejected over Barzilai in view of Lander. The rejection admits that Barzilai does not teach a three-dimensional view, and alleges that this is shown in Lander. Column 4 lines 36-47 explain that there may be three-dimensional views of furniture components. This teaches nothing about a 3 dimensional view of items in an auction setting, as claimed.

Many of the dependent claim rejections, which are not specifically discussed herein, should be allowable for similar reasons to those discussed above with respect to the respective independent claims. For example, merely showing a reference that displays screen tips, does not suggest the subject matter of claim 18 which requires that the screen tips SHOW BID AMOUNTS.

Claim 20 should be allowable for similar reasons. Merely showing a reference that shows screen tips does not suggest the subject matter of claim 20, in which the screen tips SHOW BID AMOUNTS.

Claim 32 is rejected over Holden in view of Alaia. The rejection states that Holden teaches identifying users near the end of an auction. All that Figure 8 shows, however, is keeping track of bidders, and when they placed their bid, as a bid history. There is no teaching or suggestion of training the later bids less favorably. In fact, this contention is based entirely on hindsight, and not on the teaching of the prior art.

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Alaia teaches in column 14 that a bid within a specified interval triggers an overtime, making it similar to the reference discussed above. Nowhere is there any teaching or suggestion of treating that bidder less favorably, rather the auction is extended to prevent the 'sniping'. Therefore, claims 30 and 32 are completely patentable over the cited prior art.

Certain claims stand rejected based on provisional obviousness type double patenting. However, the claims in this case are entirely different than the claims in the previous case. While admittedly, certain claims have in common certain features, such as automatic updating, is no teaching or suggestion of this subject matter in the prior art.

In addition, it is noted that the Patent Office has taken the administrative position that patent applications in class 705 should be examined with extraordinary scrutiny. The undersigned respectfully advances the notion that this extraordinary scrutiny to the examination is ultra vires the Patent Office's authority as an institution, denies the undersigned applicant both due process, and equal protection under the laws, and as such, is improper.

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the

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amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Therefore, and in view of the above amendments and remarks, all of the claim should be in condition for allowance. A formal notice to that effect is respectfully solicited.

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Please charge any fees due in connection with this response to Deposit Account

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Respectfully submitted,

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